



WISCONSIN LEGISLATIVE COUNCIL

PERMANENCY FOR YOUNG CHILDREN IN THE CHILD WELFARE SYSTEM

Legislative Council Conference Room
One East Main Street, Suite 401, Madison

October 9, 2012
10:00 a.m. – 4:00 p.m.

[The following is a summary of the October 9, 2012 meeting of the Special Committee on Permanency for Young Children in the Child Welfare System. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

Call to Order and Roll Call

Chair Kerkman called the committee to order. The roll was called and a quorum was determined to be present.

COMMITTEE MEMBERS PRESENT: Rep. Samantha Kerkman, Chair; Sen. Mary Lazich, Vice Chair; Rep. Jill Billings; and Public Members Colleen Ellingson, Chris Foley, Amy Herbst, Molly Jasmer, Robin Neeson, Rändi Othrow, Ron Rogers, Michelle Snead, and Mary Sowinski.

COMMITTEE MEMBERS
EXCUSED: Rep. Tamara Grigsby; and Public Members Mark Gumz, Esie Leoso-Corbine, Laura Maki, and Jessica Murphy.

COUNCIL STAFF PRESENT: Melissa Schmidt and Margit Kelley, Staff Attorneys.

APPEARANCES: Ramona A. Gonzalez, Judge, La Crosse County Circuit Court; and Stephen M. Rubin, Judge Emeritus, Arizona Pima County Superior Court, Juvenile Division.

Approval of the Minutes of the Special Committee's September 11, 2012 Meeting

Senator Lazich moved, seconded by Ms. Neeson, that the minutes of the committee's September 11, 2012 meeting be approved. The motion passed on a unanimous voice vote.

Presentations by Invited Speakers

The Honorable Ramona A. Gonzalez, La Crosse County Circuit Court

Judge Gonzalez shared her professional background working in the child welfare system. She explained that upon graduation from law school in 1981, she worked as a law clerk in a La Crosse County juvenile circuit court. This opportunity allowed her to experience how professionals involved in the child welfare system sometimes intervened in instances where the only issue was a parent not parenting like the status quo parent.

Judge Gonzalez shared that upon finishing her clerkship, she worked as a guardian ad litem and then became a circuit court judge in La Crosse County in 1995. She described that at the same time that she was first elected to the bench, La Crosse County circuit court judges changed how they handled ch. 48 cases. She said that the judges recognized that the adversarial nature of the judicial system was not the most expeditious way to handle ch. 48 cases. She stated that the changes made by the courts in La Crosse County resulted in a mediation program designed to mediate termination of parental rights (TPR) and child in need of protection or services (CHIPS) cases.

Judge Gonzalez said that the judges also decided to spend money upfront and provide services to a child when he or she first enters the judicial system, rather than spending more money in the correctional system when the child is grown. She said that this resulted in a program whereby La Crosse County provided parents with legal counsel during CHIPS proceedings. She said that this was viewed as a cost-savings measure.

Judge Gonzalez listed a number of items that she would like to see addressed. This list includes: (1) review the grounds for removing a child or filing a CHIPS petition and make sure they keep up with current research on children; (2) review the grounds for filing a CHIPS petition in neighboring states, such as Minnesota; (3) eliminate the nine-month period of time in which there is a substantial likelihood that a parent will not meet the conditions for safe return, that must be found in the TPR ground of continuing need of protection or services; (4) review a parent's right to a jury trial in TPR cases, considering whether a judge might be better suited to uphold the parent's constitutional rights; and (5) provide better training and resources for foster parents on how to provide trauma-informed care.

In response to questions, Judge Gonzalez explained that in La Crosse County, the judge that handles the initial CHIPS petition, is the judge that handles any criminal or ch. 48 case against the parent, provided that parents do not raise the issue of judicial substitution. She also said that she has reviewed grounds for filing a CHIPS petition in Ohio and Minnesota. She suggested that the committee consider how these two states address the grounds for a CHIPS petition based on a parent being incarcerated or institutionalized. She said that in her experience, most parents participate in 30-day treatment programs and are not institutionalized for 15 months.

In response to questions about involuntary TPR cases, Judge Gonzalez also said that summary judgment proceedings are almost impossible to utilize because the ground for an involuntary TPR based on the continuing need of protection or services has a nine-month "redemption period." She recommended that the statutes should not mandate that an involuntary TPR petition be filed after the child has been in out-of-home care for six of the last 22 months. She explained that TPR cases are rarely ready after only six months and that this will result in the child ultimately losing the involuntary TPR case. She also said that given the large caseload county corporation counsels maintain, if a corporation counsel does not win a TPR case, retrial of the TPR petition generally becomes a low priority.

Lastly, in response to questions about foster parents and adoption proceedings, Judge Gonzalez suggested eliminating the home study requirement for a licensed foster parent that is in the process of adopting a child.

The Honorable Stephen M. Rubin, Emeritus, Arizona Pima County Superior Court, Juvenile Division

Judge Rubin described his background as a juvenile court judge in Tucson, Arizona (Pima County). He shared that he served as a juvenile court judge for 24 years, during which time he was actively involved in the National Council of Juvenile and Family Court Judges (NCJFCJ), serving on the council's board for five years and then as the council's president in 2005-06. He also conducted continuing education for judges and attorneys on child abuse and neglect. He said that he now serves as the Pima County juvenile court administrator and acts as a consultant with a number of states that are working to improve outcomes for their juvenile court system.

Judge Rubin explained that in 1996 the Pima County juvenile court became one of the original nine model courts working with the NCJFCJ's court improvement process. Under this court improvement process, the juvenile courts committed to improving outcomes for children by taking a leadership role in changing the child welfare system. He said that the Arizona Legislature was also interested in child welfare issues and enacted NCJFCJ recommendations found in the *Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases*, NCJFCJ (1995). Judge Rubin said that one year later in 1997, the federal American Safe Families Act (ASFA) was enacted, using the resource guidelines as a foundation for the Act. Judge Rubin said that Arizona law was then modified to comply with ASFA.

Judge Rubin said that in 2003, Arizona enacted legislation that gave parents the right to a jury during an involuntary TPR trial. He explained that this legislation was enacted in response to a perceived concern that the Arizona Department of Economic Security, Division of Child Protective Services (CPS) was removing too many children from their homes. He also explained that the right to a jury trial terminated in 2006 because this legislation had a sunset provision that required reauthorization after three years. He stated that the Legislature passed legislation to renew the right to a jury trial but that the bill was vetoed by the Governor.

Judge Rubin described some of the problems Arizona experienced with the use of jury trials. He said that Arizona juvenile courtrooms were not equipped to conduct jury trials because they did not have jury boxes or jury deliberation rooms. He also said that jury trials cost more in attorney fees because most attorneys did not know how to try an involuntary TPR case before a jury and there were significant delays with court scheduling. He also said that during the three-year period, most jury verdicts resulted in a parent's rights being terminated, which he believed caused the drop in jury requests as evidenced in the second and third years.

In response to questions, Judge Rubin explained that juvenile courts in Arizona are structured such that one judge hears every case related to the child's family, excluding criminal cases. He also said that a party does not have the right to substitute a judge once there has been an appearance before the judge on the facts of the case. He explained that Arizona's process from a CHIPS petition to an involuntary TPR trial is one continuous process, unlike Wisconsin's process which is a two-part process.

In response to other questions about Arizona's outcomes, Judge Rubin shared that requiring one judge to handle every case related to the child's family improved outcomes for children in Arizona

because judges took ownership of the case and parents became more engaged in the process. He explained that parents are afforded an attorney in CHIPS proceedings, beginning with the preliminary protective hearing. He said that Arizona initiatives to increase participation by fathers include a concerted effort to locate a father and include him in the preliminary protective hearing.

Regarding questions about reasonable efforts, Judge Rubin explained that if reasonable efforts are not required, the state typically asks the court to make a finding at the initial hearing that CPS does not have to make reasonable efforts.

Description of Materials Distributed

Chair Kerkman welcomed Devon Lee from the State Public Defender's (SPD) office to participate in committee discussion because Public Member Mark Gumz was unable to attend the meeting. Representative Kerkman also provided an overview of plans to review the bill drafts prepared in response to committee suggestions. She explained that there were no plans to take a formal vote on a bill draft until at least the committee's final meeting in December, and that if redrafting was necessary after the December meeting, there was an option to vote on bill drafts by means of a paper mail ballot.

Margit Kelley, Legislative Council Staff, briefly described the materials distributed to the committee, including two memoranda from SPD; a memorandum from assistant corporation counsels Megan DeVore, La Crosse County, Wendy Klicko, Sauk County, and Eve Dorman, Dane County; a memorandum from the Honorable Peter L. Grimm, Fond du Lac County Circuit Court; a handout regarding a report on the rights of a parent with disabilities; and a press release from the Department of Children and Families (DCF) regarding approval of the state's 2012 Title IV-E waiver application.

WLC: 0009/1, Relating to CHIPS Jurisdiction Over a Newborn

Melissa Schmidt, Legislative Council Staff, described the contents of WLC: 0009/1 and outlined some drafting questions for the committee to consider. The committee discussed making the following changes to the draft: (1) specify that jurisdiction should apply to a child under the age of three; (2) allow this ground for filing a CHIPS petition to apply to any parent that had his or her rights previously terminated, not just a custodial parent; (3) add this ground for filing a CHIPS petition to the ground for filing a TPR under s. 48.415 (10) (a), Stats.; and (4) limit the ground for filing a CHIPS petition to instances where the juvenile court has made a finding that the child has not received appropriate care. Chair Kerkman requested that Legislative Council make these changes to the bill draft for further committee review.

WLC: 0011/1, Relating to Physical, Psychological, Mental, or Developmental Examination and AODA Assessment of a Parent

Ms. Schmidt described the contents of WLC: 0011/1 and outlined some drafting questions for the committee to consider. The committee discussed making the following changes to the draft: (1) allow the court to order an assessment under s. 48.295, Stats., regardless of whether a petition has been filed; and (2) prohibit the assessment from being used against a parent in the pending CHIPS proceedings but allow it during TPR proceedings. Chair Kerkman requested that Legislative Council make these changes to the bill draft for further committee review.

WLC: 0007/1, Relating to Next of Kin Parental Homicide Victim

Ms. Schmidt described the contents of WLC: 0007/1 and outlined some drafting questions for the committee to consider. The committee discussed making the following changes to current law related to family members of deceased parents: (1) ensure that notice for all ch. 48 proceedings is given to family members of a deceased parent; and (2) create a placement preference for a child placed in out-of-home care to be placed with the family of a deceased parent who was a homicide victim, when the child's other parent was the perpetrator. Chair Kerkman requested that Legislative Council make these changes to the bill draft for further committee review.

WLC: 0008/1, Relating to Sibling Visitation

Ms. Schmidt described the contents of WLC: 0008/1 and outlined some drafting questions for the committee to consider. The committee discussed making the following changes to the draft: (1) insert language to allow an adoptive parent to give permission for being contacted in the future if the adoptive child has a sibling entering into out-of-home care; and (2) clarify that a court may only order that a child be placed or visit a sibling if he or she is also under a CHIPS order. Chair Kerkman requested that Legislative Council make these changes to the bill draft for further committee review.

WLC: 0012/1, Relating to TPR Ground of Continuing CHIPS

Ms. Kelley described the contents of WLC: 0012/1 and outlined some drafting questions for the committee to consider. The committee discussed making the following changes to the draft: (1) delete the phrase, "prior to the filing of the petition," on page 2, line 8; and (2) ensure that due process is met by applying any revisions to the TPR grounds only when a parent has received the TPR warnings after the revisions go into effect and a child has been removed from the home. Chair Kerkman requested that Legislative Council make these changes to the bill draft for further committee review.

WLC: 0013/1, Relating to When no Reasonable Efforts are Required

Ms. Kelley described the contents of WLC: 0013/1 and outlined some drafting questions for the committee to consider. The committee discussed standardizing references to a judicial finding, statement, or determination. The committee also discussed concerns regarding the impact that this bill draft could have on Title IV-E funding, if any. Chair Kerkman requested that Legislative Council make these changes to the bill draft for further committee review and requested that Ms. Kelley investigate the Title IV-E funding requirements.

WLC: 0014/1, Relating to Demand for Speedy Trial in Criminal Case

Because there was not enough time to completely discuss the contents of WLC: 0014/1, Chair Kerkman stated that this bill draft would be reviewed at a future meeting of the committee.

WLC: 0010/1, Relating to Right to Counsel for Parents in CHIPS Proceedings

Because there was not enough time to completely discuss the contents of WLC: 0010/1, Chair Kerkman stated that this bill draft would be reviewed at a future meeting of the committee.

Memo No. 4: Proposals to Revise Certain Grounds for Involuntary Termination of Parental Rights

Because there was not enough time to completely discuss the contents of Memo No. 4, Chair Kerkman stated that the legislative options listed in this Memo would be reviewed at a future meeting of the committee.

Discussion of Committee Assignment and Plans for Future Meetings

Chair Kerkman outlined plans for the November and December committee meetings. She reminded the committee that the next two meetings would be held on November 15 and December 18, 2012, and explained that the committee will devote most of these next meetings to the discussion of options for legislation and bill drafts. Ms. Schmidt also explained that the legislative options included in Memo No. 3 that had not been discussed at either the committee's September or October meeting will be discussed in November. In response to questions about the possibility of submitting additional legislative options for committee action, Ms. Schmidt informed the committee that committee members could still submit additional ideas and requested that they do so as soon as possible.

Other Business

There was no other business before the committee.

Adjournment

The meeting was adjourned at 4:00 p.m.

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